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10 Attorneys for Defendants
11 Lee's General Toys, Inc., and
12 John Lee
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15 UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
17
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19 -----) CASE. NO. O7 CV 2391
20 GEORGIA-PACIFIC CONSUMER) (JAH POR)
21 PRODUCTS LP, a Delaware limited)
22 partnership,) DEFENDANTS BRIEF
23 Plaintiff,) RE EARLY NEUTRAL
24) EVALUATION
25 vs.)
26)
27 LEE'S GENERAL TOYS, INC., a California))
28 corporation, JOHN LEE, an individual; and)
DOES 1-10,)
Defendants.

Date: March 18, 2008
Time: 10:00 am
Judge: Hon. L. Porter

Defendants Lee's General Toys, Inc. and John Lee respectfully submit their Brief Re
Early Neutral Evaluation.

28 ///

1 Dated: March 10, 2008

KAZANJIAN & MARTINETTI
RONALD MARTINETTI, ESQ.

2 By Ronald Martinetti
3 Ronald Martinetti
4 Attorneys for Defendants

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6 MEMORANDUM OF LAW

7 A. OVERVIEW

8 This case is an extension of the long sorry history of railroads in the Deep South and in
9 the state of Georgia. Very often Southern railroads were built or maintained by convict
10 labor; after Reconstruction, they were rigidly segregated for decades. In Georgia the
11 railroads were so hated by the legislature and common people that the Georgia Central
12 Railroad was forced to seek outside capital to survive and sold its facilities to E. H.
13 Harriman, one of the great New York robber barons. Harriman promised to spend ten
14 million dollars to save the line “If the State will cease to be antagonistic to the railroads’
15 interests...” Maury Klein, *The Life & Legend of E.H. Harriman*, University of North
16 Carolina Press (2000), p. 427

17
18 Not even the great robber barons and an infusion of Wall Street capital could save the
19 railroads from mismanagement and the advance of technology. By the 1940s great aviation
20 pioneers like Howard Hughes and his brainchild TWA had displaced the antiquated
21 railroads with a swifter form of passenger travel; a decade later, long haul trucking had cut
22 into the market for delivery of commercial goods.

23
24 By the 1960s many rail lines faced bankruptcy or were forced to diversify into other
25 enterprises such as Georgia-Pacific and its apparent entry into the bathroom tissue market.

1 B. PLAINTIFF'S ANGEL SOFT TRADEMARK IS A SIMPLE DESCRIPTION
2 ONE THAT APPEARS TO TRADE OFF BETTER KNOWN BRANDS
3 SUCH AS CHARMIN AND IS NOT ENTITLED TO TRADEMARK
4 PROTECTION

5 Plaintiff has admitted in a footnote in papers filed with the Court that the trademark
6 Office refused to grant it a trademark for the word "soft." However, it appears that Plaintiff
7 has also failed to attach this statutorily required disclaimer to its advertising and promotional
8 efforts.

9 Plaintiff does not elaborate as to why the word "soft" was rejected by the Trademark
10 Office; presumably, the term "soft" was rejected as purely descriptive.

11 However, the term Angel Soft is merely another way of describing the tissue as
12 "soft as an angel," and our circuit has long held that "Purely descriptive terms. are not so
13 protected." *Carter-Wallance, Inc. v. Procter & Gamble Co.*, 434 F.2d 794, 800 (9th. Cir.
14 1970 (e.g., "shredded wheat") (Citation omitted.

15 Plaintiff's packaging and use of the word "soft" is similar to that of a far more
16 popular market brand (Charmin) (Exhibit 1) and like the generic bathroom tissue sold at
17 Ralph's. (Exhibit 2) Yet, Plaintiff has the nerve to accuse Defendants of trademark
18 infringement.

19 In fact, Defendants sell their superior product to swap meets in largely Latino areas.
20 Although Plaintiff's web site lists Texas and Arizona as Latin markets it targets, there is NO
21 listing of California. Defendants intend to explore this omission through formal discovery
22 and to vigorously oppose Plaintiff's obtaining a permanent injunction.

23 Moreover, Defendants have held a valid California trademark since 2003 in the name
24 Angelite. This lawsuit is nothing more than a naked grab for that valuable intellectual
25 property, and Defendants feel confident in their position that Georgia-Pacific's attempt to

1 establish trademark protection for its generic descriptive marks will fail and that the
2 company will be found to be a "Johnny come lately" to the Latino market whose efforts are
3 not entitled to monopoly protection.

4 Defendants respectfully request that Plaintiff immediately dismiss its lawsuit and
5 enter into an equitable resolution of this matter.
6

7 Dated: March 10, 2008

KAZANJIAN & MARTINETTI
RONALD MARTINETTI, ESQ.

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9 By Ron Martinetti
10 Ronald Martinetti
11 Attorneys for Defendants
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EXHIBIT 1

28 27 26 25 24 23 22 21 20 19 18 17 16 15 14 13 12 11 10 9 8 7 6 5 4 3 2 1



EXHIBIT 2

1 PROOF OF SERVICE BY MAIL - (1013a, 2015.5 C.C.P.)
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within above-entitled action; my business address is 520 E.
5 Wilson Ave., Suite 250, Glendale, California 91206.

6 On March 11, 2008 I served the foregoing **DEFENDANTS BRIEF RE EARLY**
7 **NEUTRAL EVALUATION** on all the interested parties in this action as follows:

8 Stephen P. Swinton, Esq.
9 Adam A. Welland, Esq.
10 Latham & Watkins LLP
11 12636 High Bluff Drive, Suite 400
12 San Diego, CA 92130-2071
13 Fax No.: (858) 523-5450

14 a true copy an original

15 BY PERSONAL DELIVERY/VIA MESSENGER;

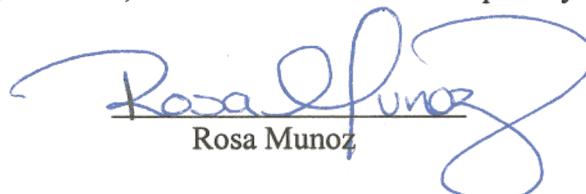
16 **BY ELECTRONIC FILING:** I am familiar with the United States District Court, Southern
17 District of California's practice for collecting and processing electronic filings. Under that practice,
18 documents are electronically filed with the court. The court's CM/ECF system will generate a
19 Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in
20 the case. The NEF will constitute service of the document. Registration as a CM/ECF user
21 constitutes consent to electronic service through the court's transmission facilities. Under said
22 practice the above mentioned parties were served.

23 **PREPAID POSTAGE:** I deposited such an envelope in the mail at Glendale, California. The
24 envelope was mailed with postage thereon fully prepaid.

25 **U. S. MAIL:** I am "readily familiar" with our firm's practice of collection and processing
26 correspondence for mailing. It is deposited with the U.S. Postal Service on that same day on the
ordinary course of business. I am aware that on motion of any party served, service is presumed
invalid if postal cancellation date or postage meter date is more than one day after the date of deposit
for mailing affidavit.

27 **BY FACSIMILE:** On the interested parties in this action pursuant to C.R.C. RULE 2009
28 (b). The telephone number of the facsimile machine I used was (818) 241-2193. This facsimile
machine complies with Rule 2003 (2) of the California Rules of Court. The transmission was
reported as complete and without error. The facsimile machine printed out a record indicating that
the transmission was successfully completed.

29 Executed on March 11, 2008, Glendale, California. I declare under penalty and perjury, that
30 the foregoing is true and correct.


31 Rosa Munoz